

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States)	
Department of Housing and Urban)	
Development, on behalf of)	
XXXX,)	
)	HUD ALJ No.
Charging Party,)	FHEO No. 08-11-0182-8
)	
v.)	
)	
Brad Carter and Julie Ward-Carter,)	
)	
Respondents.)	
)	
)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about June 24, 2011, the complainant, XXXX (“Complainant”), filed a verified complaint with the United States Department of Housing and Urban Development (the “HUD Complaint”), alleging that Respondents Brad Carter and Julie Ward-Carter (“Respondents”) violated the Fair Housing Act as amended in 1988, 42 U.S.C. Section 3601 *et seq.* (the “Act”), by refusing to grant him a reasonable accommodation, refusing to renew his lease due to unpaid discriminatory fines and fees, and interference with his housing rights in violation of 42 U.S.C. §§ 3604 and 3618. On or about August 10, 2011, the HUD Complaint was amended to remove two other named respondents, Respondent’s property manager and Respondent’s property management company, who entered into a separate conciliation agreement with the Complainant.

The Act authorizes the issuance of a charge of discrimination on behalf of an aggrieved person following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. § 3610(g)(1) and (2). The Secretary has delegated to the General Counsel (54 Fed. Reg. 13121), who has redelegated to the Regional Counsel (76 Fed. Reg. 42465), the authority to issue such a charge, following a determination of reasonable cause by the Assistant Secretary for Fair Housing and Equal Opportunity or his or her designee.

The Office of Fair Housing and Equal Opportunity Region VIII Director, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred in this case and has authorized and directed the issuance of this Charge of Discrimination.

II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned HUD Complaint and Determination of Reasonable Cause, Respondents Brad Carter and Julie Ward-Carter are charged with discriminating against Complainant XXXX, an aggrieved person as defined by 42 U.S.C. §3602(i), based on disability in violation of 42 U.S.C. §§ 3604(f) and 3617 of the Act as follows:

1. It is unlawful to discriminate in the sale or rental, or otherwise make unavailable or deny, a dwelling to any buyer or renter because of handicap of that buyer or renter. 42 U.S.C. § 3604(f)(1)(A); 24 C.F.R. § 100.202(b)(1).
2. It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such a dwelling after it is sold. 42 U.S.C. § 3604(f)(2)(A) and (B). Discrimination includes a refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford a disabled person an equal opportunity to use and enjoy a dwelling unit. 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204.
3. It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by sections 3603, 3604, 3605, or 3606 of Title 42 of the U.S. Code. 42 U.S.C. §3617; 24 C.F.R. §100.70.
4. The subject property is a condominium unit in the Fox Point at Redstone development, a multifamily condominium complex, located at 1618 W. Redstone Avenue, Unit E, Park City, Utah 84098 ("Subject Property").
5. Complainant XXXX is a disabled veteran of the Gulf War suffering from an agitated form of depression. Complainant has a disability as defined by 42 U.S.C. § 3602(h).
6. Respondents Brad Carter and Julie Ward-Carter are the owners of the Subject Property.
7. Complainant rented the Subject Property from Respondents from approximately December 21, 2008, through September 30, 2010.

8. At all times relevant to this charge, Respondents utilized the services of a property management company (“Respondents’ Property Management Company”) and property manager (“Respondents’ Property Manager”) for the rental of the Subject Property.
9. Fox Point at Redstone Association, Inc. (“the HOA”) is the community homeowner association for the Subject Property. At all times relevant to this Charge, the HOA was responsible for the common rules and policies governing the condominium regime at Fox Point at Redstone and the Subject Property.
10. Property Management Systems, Inc. (“PMS”) is the management agent for the Subject Property and agent of the HOA. At all times relevant to this Charge, PMS was responsible for the daily management and operations at the Fox Point at Redstone development and the Subject Property.
11. Derek Peterson (“Peterson”) is a property manager and real estate sales agent for PMS. At all times relevant to this Charge, Peterson was responsible for the day-to-day operations and management of the Fox Point at Redstone development and Subject Property, including the processing of reasonable accommodation requests and the assessment of fines and fees.
12. The HOA has a written pet policy at the Subject Property implemented on May 6, 2010. The HOA’s policy prohibits “outside pets” and requires a one-time \$150.00 registration fee for each pet and proof of liability coverage of at least \$100,000. The policy states in part:

Nothing in this policy shall preclude the ownership and possession of an animal which is required as, or which qualifies as a ‘service animal’ as allowed by the Federal Fair Housing Act: provided however that the [HOA] shall be entitled to require satisfactory evidence of the eligibility and need for any such animal and the Association may require that the service animal otherwise qualify where it is reasonable to do so, with the other provisions of this [pet] policy.
13. The HOA has a 10-step written policy for processing requests for service animals. The process differs depending on whether the request is for an emotional support animal or whether the requestor’s disability is apparent.
14. For an emotional support animal, the HOA’s policy requires a letter from a licensed mental health professional verifying the disability the animal is supporting, explaining how the animal serves as an accommodation, and explaining how the need for the animal relates to the person’s use and enjoyment of the living arrangements. The policy further requires the requestor sign a medical release authorizing their physician/health care provider to speak with a representative of the HOA.

15. The HOA's service animal and emotional support policy requires the requestor to comply with their "pet policy" and pay a \$150.00 registration fee.
16. In or about May 2010, Complainant brought his emotional support animal¹, a labradoodle², to the subject property to live with him and his wife.
17. On or about May 24, 2010, Peterson emailed Respondent Brad Carter and informed him that Complainant had a dog at the Subject Property.
18. On or about May 25, 2010, the Respondents' Property Management Company emailed Complainant and informed him that if he had a dog at the Subject Property he needed to remove the dog or be subject to fines and possible eviction.
19. On or about May 25, 2010, Complainant responded by email to the Respondents' Property Management Company and informed them that the dog was an emotional support animal under the Act, and not a pet, and the HOA was required by law to make an exception to its pet policy.
20. On or about May 25, 2010, Respondents' Property Management Company emailed Complainant and informed him he needed to provide medical documentation to support his request, fill out HOA's pet registration paperwork, and comply with all of the HOA's other requirements, including payment of the HOA's registration fee for pets.
21. On or about May 25, 2010, Complainant forwarded a scanned prescription dated May 14, 2010, from his doctor at the Veterans' Administration that stated "[Complainant] is a Gulf War veteran and is currently under my care. I believe his dog is therapeutic for him."
22. On or about May 25, 2010, Respondents' Property Management Company acknowledged the reasonable accommodation request but maintained that Complainant still needed to fill out the HOA's registration, sign a lease addendum, and pay the HOA's registration fee.
23. On or about May 25, 2010, Complainant responded by email that charging a fee for an emotional support animal would violate the Act. Complainant agreed to fill out most of the HOA's registration form, but steadfastly refused to pay the pet registration fee.
24. On or about May 27, 2010, Complainant provided the Respondents' Property Management Company with additional documentation required by the HOA's pet registration policy including the county pet license, a filled-out but unsigned the HOA pet registration form, and inoculation records for the dog; Complainant did not pay

¹ Throughout this charge, the terms "emotional support animal" and "assistance animal" are used interchangeably.

² A labradoodle is a breed of dog that is a hybrid-cross between a Labrador Retriever and a Poodle.

the \$150.00 pet registration fee. The Respondents' Property Manager provided this information to Peterson and informed Complainant he needed to work directly with the HOA to process his reasonable accommodation request.

25. On or about June 1, 2010, Complainant provided to Peterson a letter from Complainant's psychotherapist, dated May 28, 2010. The letter identified Complainant as a person with a disability, identified limitations Complainant confronts as a result of his disability, and opined that an emotional support animal would alleviate these limitations and would enhance Complainant's ability to fully use and enjoy the Subject Property.
26. Complainant informed Peterson that he did not want Peterson to share his private medical information with the HOA's Board, as the Board is comprised of his neighbors.
27. On or about June 3, 2010, the attorney for the HOA sent Complainant an email asserting that the HOA had the right to request and receive appropriate medical information in support of the reasonable accommodation request, and that access to such information should not be restricted. Complainant responded to the HOA's attorney's email stating that he had adequately substantiated his disability and need for his emotional support animal when he provided Peterson with the letter from Complainant's psychotherapist. Complainant disputed the need for the Board members, who are his neighbors, to review his private medical information.
28. On or about June 22, 2010, the HOA's attorney responded by email that the Complainant's position was unwarranted and that Complainant had not provided adequate substantiation of the disability or necessity for the animal. The HOA's attorney went on to inform Complainant he would recommend enforcement action be taken.
29. On or about June 22, 2010, Complainant responded to the HOA's attorney and Peterson, in relevant part:

Once again I have cooperated fully with the request of information. Asking me to share my private medical information with all my neighbors is unreasonable. If you need to substantiate my disability, then Derek Peterson has the contact information to do so. Ask him to contact my provider to substantiate the document with my medical condition. The board hired Mr. Peterson to represent them, so I'm sure they can trust his word on this matter.
30. PMS and Peterson were authorized by the HOA to process and handle reasonable accommodation requests at Fox Point at Redstone and the Subject Property.
31. According to Peterson, the medical documentation provided by Complainant was satisfactory to establish the disability and show necessity, and the sole point of

contention between the Complainant, Respondents, the HOA, and Peterson was the payment of the pet registration fee.

32. On or about July 6, 2010, Respondents' Property Management Company forwarded to Complainant by email a copy of a letter from the HOA dated July 2, 2010, fining Respondents \$150 for an animal being present in the Subject Property and barking. Respondents' Property Management Company informed Complainant that he would need to pay the fines immediately. Complainant refused to pay the fine assessed against Respondents.
33. On or about July 8, 2010, Peterson emailed Complainant, with Respondents, Respondents' Property Manager, and the HOA's attorney all carbon copied, to acknowledge receipt of his pet registration form. Peterson further requested that Complainant provide a liability insurance certificate for the animal to the HOA and also requested the \$150.00 registration fee from Respondents' Property Manager. That same day, Respondents' Property Manager responded that Complainant would need to pay the registration fee, to which Peterson responded that Respondents should take the fee out of Complainant's security deposit.
34. On or about July 12, 2010, Complainant sent separate identical letters to the Respondents' Management Company and Peterson requesting they allow the emotional support animal as a reasonable accommodation and to remove any fines and registration fee.
35. On or about July 29, 2010, Complainant, Complainant's attorney advocate, Respondents, Peterson, and the HOA's attorney held a conference call to discuss the issues that are the subject of this Charge. During that conference call, no resolution was reached between the parties on the sole remaining issue, which was payment of the pet registration fee. Complainant continued to assert that the registration fee for the assistance animal was illegal and the HOA and Respondents disagreed. Complainant agreed to purchase the required liability insurance, but refused to pay the required registration fee.
36. On or about August 2, 2010, Peterson informed Complainant that he, the HOA's attorney, and the HOA had reviewed Complainant's requested accommodation to rescind the registration fee for Complainant's assistance animal, and that they refused to waive the pet registration fee.
37. On or about August 23, 2010, Peterson informed Respondents that the HOA had assessed a \$50.00 fine against them. The fine letter stated that the fine was being imposed because the Respondents, despite previous warnings, were still allowing Complainant to keep an animal at the Subject Property.
38. On September 15, 2010, Peterson informed Respondents that the HOA had assessed a \$75.00 fine against them. The fine letter stated that the fine was being imposed

because Respondents, despite previous warnings, were still allowing Complainant to keep an animal at the Subject Property.

39. On September 16, 2010, Peterson informed Respondents that the HOA had assessed a \$100.00 fine against them. The letter stated that the fine was being imposed because the Respondents, despite previous warnings, were still allowing Complainant to keep an animal at the Subject Property.
40. The first fine was imposed on July 2, 2010, after sufficient information to establish Complainant's disability and the need for the emotional assistance animal was received by Respondents, the HOA, and Peterson.
41. The last three fines, August 23, 2010, September 15, 2010, and September 16, 2010, were imposed well after it had been conceded that the dog was an assistance animal and not a pet.
42. Complainant's lease with Respondents was set to expire on September 30, 2010.
43. On or about September 7, 2010, Complainant emailed Respondents and the Respondents' Property Manager to express Complainant's willingness to extend the lease.
44. On or about September 10, 2010, the Respondents' Property Manager informed Complainant that Respondents were willing to extend the lease if Complainant paid the \$150.00 registration fee and paid \$200.00 in fines that the HOA had imposed on Respondents.
45. Complainant declined the conditional offer to renew the lease and moved out of the Subject Property.
46. On or about October 21, 2010, the Respondents' Property Manager refunded a portion of Complainant's security deposit, but deducted \$150.00 for the "1st Pet violation assessment charged by HOA," and \$98.92 for dry cleaning drapes to remove dog hair from the curtains.
47. In or about September 2010, Peterson discussed the fines with Respondents and reassured them that Respondents should seek forgiveness of the fines after the Complainant's departure.
48. Subsequent to Complainant moving out of the Subject Property, the HOA waived all fines and fees assessed against Respondents except for \$150.00, which was taken out of Complainant's deposit.
49. Respondents violated the Act by discriminating against the Complainant in the terms, conditions, or privileges of the rental of a dwelling, by refusing to make a reasonable accommodation to their pet policy and charging a fee for Complainant's service

animal, when such an accommodation was necessary to afford the Complainant an equal opportunity to use and enjoy the dwelling. 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204.

50. Respondents violated the Act by making housing unavailable to the Complainant due to his disability when they conditioned the renewal of his lease on the payment of a fee for Complainant's assistance animal. 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.202(b)(1).
51. Respondents violated the Act by making housing unavailable to the Complainant due to his disability when they conditioned the renewal of his lease on the payment of fines for Complainant's assistance animal.
52. Respondents violated the Act by harassing Complainant and for passing on fines and fees to the Complainant for maintaining an emotional support animal. 42 U.S.C. § 3617; 24 C.F.R. § 100.70.
53. As a result of Respondents' discriminatory conduct, Complainant and his wife suffered damages including but not limited to physical and emotion distress, anxiety, and inconvenience.
54. As a result of Respondents' discriminatory conduct, Complainant and his wife suffered economic damages including but not limited to relocation costs, loss of a portion of their security deposit, and other miscellaneous costs.

III. CONCLUSION

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of the General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A) (2004) of the Act, hereby charges Respondents with engaging in discriminatory housing practices in violation of Section 3604(f) and 3617 of the Act, and prays that an order be issued that:

1. Declares that the discriminatory housing practices of the Respondents, as set forth above, violate the Fair Housing Act, as amended 42 U.S.C. § 3601 *et seq.*;
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them from discriminating against any person because of disability in any aspect of the rental, sale, use, or enjoyment of a dwelling;
3. Awards such damages as will fully compensate the Complainant for his actual damage, inconvenience, and economic loss caused by Respondents' discriminatory conduct pursuant to 42 U.S.C. § 3612(g)(3); and

4. Assesses a \$16,000 civil penalty against each Respondent for each violation of the Act that Respondents have committed pursuant to 42 U.S.C. § 3612(g)(3).

The Secretary of HUD further prays for additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3) (2004).

Respectfully submitted,

_____/s/_____
Lisa Coronado
Acting Regional Counsel, Region VIII

_____/s/_____
Matt Mussetter
Attorney Advisor
U.S. Department of Housing and
Urban Development
Office of Regional Counsel,
Region VIII
1670 Broadway, 25th Floor
Denver, CO 80202-4801
Telephone: (303) 672-5409
Fax: (303) 672-5027

Date: September 29, 2011